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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MATTHEW R. LINDNER, individually; as)	CASE NO.: 2:10-cv-00051-LDG-VCF
surviving spouse and legal heir of ELSY LETICIA)	
GRANADOS-MARTINEZ, deceased; as)	
surviving parent and legal heir of CAMILA)	PLAINTIFFS' REPLY IN SUPPORT
LYNETE LINDNER, a deceased minor; and as)	OF MOTION IN LIMINE 1
Guardian Ad Litem of PAULINA GRANADOS-)	
MARTINEZ, a minor; FERNANDO)	
GRANADOS-MAGALLON, individually and as)	
surviving spouse and legal heir of REFUGIO)	
LETICIA MARTINEZ COSIO,)	
)	
Plaintiffs,)	

1 vs.)
 2)
 3)
 4 FORD MOTOR COMPANY, a Delaware)
 5 corporation; BERTHA MEZA d/b/a OROZCO)
 6 AUTO SALES; EVENFLO COMPANY, INC., a)
 7 Delaware corporation; BIG LOTS STORES, INC.,)
 8 an Ohio corporation; DOES I through XX,)
 9 inclusive and ROE BUSINESS ENTITIES I)
 10 through XX, inclusive,)
 11)
 12 Defendants.)
 13)
 14)
 15)
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)

PLAINTIFFS' REPLY IN SUPPORT OF MOTION IN LIMINE 1

Plaintiffs, MATTHEW R. LINDNER, individually; as surviving spouse and legal heir of ELSY LETICIA GRANADOS-MARTINEZ, deceased; as surviving parent and legal heir of CAMILA LYNETE LINDNER, a deceased minor; and as Guardian Ad Litem of PAULINA GRANADOS-MARTINEZ, a minor, by and through his attorneys, BENSON & BINGHAM, hereby submit their Reply in support of his Motion in Limine 1.

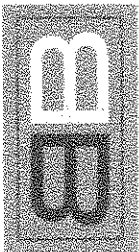
This Reply is based upon the following Points and Authorities, the pleadings and papers on file herein and any oral argument permitted at the time of hearing.

DATED this 1 day of July, 2015.

BENSON & BINGHAM

/s/ Joseph L. Benson II
 JOSEPH L. BENSON II, ESQ.
 Nevada Bar No. 7276

Attorneys for Plaintiffs



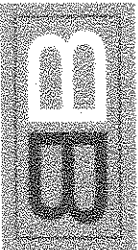
POINTS AND AUTHORITIES**1. Nevada Common Law Precludes Comparative Negligence; Seatbelt Use Statute Further Precludes Nonuse of a Seatbelt; And NO Jury Could Ever Find Negligent Driving Was the "Sole Cause" of Camila Lindner's Death.**

Nevada law is quite clear that comparative negligence/contributory fault by a plaintiff or third party is simply not a valid legal defense to a strict product liability claim. *See Young's Machine Co. v. Long*, 692 P.2d 24 (Nev. 1984). Rather, the only defenses to a strict product liability claim under Nevada common law are "assumption of the risk" and product "misuse." *Id.* Evenflo intends to present evidence placing blame on the driver of the vehicle, Fernando Ivan Granados-Martinez, for causing the rollover accident in which the Evenflo infant seat failed allowing the ejection and death of Camila Linder. Evenflo also intends to present evidence and argument placing fault and blame on Camila's mother, Elsie Lindner, for allegedly not wearing a seatbelt as a backseat passenger and encourage to jury to consider her failure to wear a seatbelt as the "proximate cause" of Camila's death. Neither of these defenses is legally tenable under Nevada law – violating both the common law and statutes.

First, with regard to the fault of the driver for causing the accident, Nevada simply recognizes no such defense in strict liability case, and such comparative causation theories are not permitted by Nevada's comparative fault statute. As the Nevada Supreme Court explained in *Young's*:

[W]e had recognized that the only defenses available in a strict products liability action were assumption of the risk and misuse of the product; ordinary contributory negligence was not to be considered. . . [W]e limit the statute to its clear language. We assume the legislature was aware of the above cases and agreed with us that strict products liability is based upon an entirely different concept from negligence. Therefore, the legislature must not have intended to include strict products liability within the comparative negligence statute.

Id. at 25.

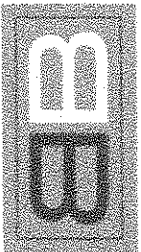


1 Second, the question here is the ejection and ensuing death of Camila during the rollover
2 accident. There is no evidence that Camila would have died as a result of the accident alone had the
3 infant seat in which she was restrained not detached from the base and been ejected during the
4 accident. Put another way, there is no evidence and there will be no evidence that the accident
5 would have caused the death of Camila Lindner in the absence of a product defect. Thus, Evenflo's
6 attempts to blame the driver of the vehicle for Camila's death would not be supported by the facts
7 or evidence in this case.
8

9 There is no permissible purpose for which Evenflo could introduce evidence of the driver's
10 negligence. Comparative fault is not a defense to a strict products liability claim and even if it
11 were, there will be no evidence that the rollover accident itself could have caused the death of Elsie
12 Linder.
13

14 Evenflo's intent to blame Elsie Lindner for not wearing her seatbelt is even more
15 problematic. Not only would such a defense contravene Nevada common law and the Nevada
16 comparative fault statute, but it would also violate Nevada's seatbelt "gag" statute. N.R.S.
17 484D.495. Under the seatbelt statute, failure to use a seatbelt in violation of the statute "may not be
18 considered as negligence or causation in any civil action. N.R.S. 484D.495(4)(b). Yet, in
19 Evenflo's response in opposition to the motion in limine, it specifically argues that it intends to
20 introduce Elsie's seatbelt nonuse on the issue of causation – a matter expressly forbidden by
21 seatbelt "gag" statute.
22

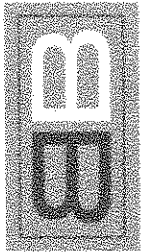
23 Evenflo tries to get around the prohibition of comparative fault by arguing that these acts are
24 somehow the sole cause of the death of Camila Lindner. However, as explained above, there is no
25 version of the facts to which *any* witness will testify in this trial that Camila's death would have
26 occurred in this rollover accident even if the infant seat had not detached from its base, allowing her
27 to be ejected from the vehicle during the accident. No witness can or will support Evenflo's
28



1 argument that the driver's negligence could be the "sole cause" of Camila's death. The only
2 purpose, therefore, for introducing such evidence is to improperly interject the driver's fault into the
3 trial in hopes of unfairly prejudicing the jury in its consideration of whether the seat was defective
4 and caused Camila's death.

5 Likewise, Elsie Lindner's alleged failure to wear a seatbelt would also never be the sole
6 cause of the death of Camila Lindner. *Camila Lindner only died because the seat detached from its*
7 *base and allowed her to be ejected.* If the jury finds the seat detached because it was defective, then
8 it is irrelevant that Elsie Lindner was negligent by not wearing a seatbelt. If the jury finds the seat
9 is not defective, then Elsie Lindner's alleged negligence is still irrelevant (since Evenflo would not
10 be liable in that instance). Thus, the cases cited in Evenflo's opposition are inapposite, since they
11 involved legitimate arguments that conduct of someone other than the defendant was *solely* the
12 cause of the injuries in question.

13 Moreover, in *Thompson v. Autoliv Safety Tech.*, No.: 2:09-cv-1375-JAD-PAL, 2013 U.S.
14 Dist. LEXIS 164365 (D. Nev. Nov. 19, 2013), the claim at issue concerned defects in an
15 automobile's seatbelt restraint system itself. It is axiomatic that a person's failure to have even used
16 the seatbelt is a legitimate defense to a claim that the seatbelt system was inadequate because it
17 directly negates causation. After all, if the person was not even using the seatbelt, there is no
18 logical way a deficiency in the restraint system could be the cause in fact of their injury. Thus, *in*
19 *that case*, the issue of seatbelt use was "central . . . as a result of both parties' claims, defenses and
20 theories." *Id.* It is not central to the claims in this case like it was in *Thompson*. The product at
21 issue here is not the vehicle's system restraining Elsie Lindner, but rather the infant car seat
22 restraining Camila. Indeed, the cause of Elsie Lindner's death is not before the jury for its
23 consideration.



1 If the Court permits Evenflo to present evidence, if any, that Elsie Linder's body moved into
2 and loaded the infant seat during the rollover sequence, there is no further need for the jury to hear
3 about or consider Elsie's alleged failure to wear a seatbelt. Should the Court allow such evidence
4 over Plaintiff's objection, the jury should be instructed to only consider it for the limited purpose of
5 determining whether the Camila Lindner's death was proximately caused by a defect in the Evenflo
6 infant seat.
7

8 It would be highly improper to interject the question of Elsie Lindner's alleged negligence,
9 either directly or by implication, into this product liability action. The rationale underlying
10 Nevada's strict product liability cause of action is understood by the Nevada Supreme Court to be
11 broadly construed to protect injured parties. Indeed, in refusing to allow evidence of comparative
12 fault in strict liability cases, the Nevada Supreme Court likened the cause of action to claims for
13 "willful and wanton misconduct" and found the rationale for rejecting comparative fault "equally
14 appropriate" in strict product liability actions. *Young's*, 692 P.2d at 25.
15

16 CONCLUSION

17 Based upon the foregoing, it is respectfully requested that this Court enter an order
18 approving item 1 in Plaintiffs' Omnibus Motion in Limine, and for all other relief requested.

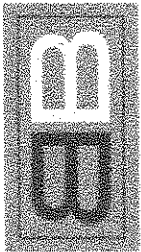
19 DATED this 1 day of July, 2015.

20 BENSON & BINGHAM

21 /s/ Joseph L. Benson II
22 JOSEPH L. BENSON II, ESQ.
23 Nevada Bar No. 7276

24 Attorneys for Plaintiffs
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BENSON & BINGHAM
ATTORNEYS AT LAW



CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF MOTION IN LIMINE 1** was made this date by electronic service to the following:

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DATED this 1 day of July, 2015.


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